

E-Filed 1/7/11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANDRE V. JACKSON,

Plaintiff,

v.

H. GRIFFIN, et al.,

Defendant.

No. C 10-5489 RS (PR)

**ORDER REOPENING ACTION;
DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. The complaint was dismissed owing to plaintiff's failure to file a timely application to proceed *in forma pauperis*. Plaintiff having filed an complete application, the action is hereby REOPENED. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a).

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and

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dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

Plaintiff alleges that defendant, an employee of Pelican Bay State Prison, has failed to give him material from the prison law library necessary to plaintiff. Plaintiff’s allegations do not contain sufficient factual allegations to state a claim for relief. Plaintiff must name specific materials he asked for and was refused, the persons directly involved in these actions, and how the denial of such materials resulted in injury to him. Accordingly, the complaint is DISMISSED with leave to amend. Plaintiff shall file an amended complaint within 30 days from the date this order is filed. The first amended complaint must include the caption and civil case number used in this order (10-5489 RS (PR)) and the words FIRST AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the previous complaints, plaintiff must include in his first amended complaint all the


1 claims he wishes to present and all of the defendants he wishes to sue. *See Ferdik v.*
2 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from
3 the prior complaint by reference. Failure to file an amended complaint in accordance with
4 this order will result in dismissal of this action without further notice to plaintiff.

5 It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
6 informed of any change of address by filing a separate paper with the clerk headed "Notice
7 of Change of Address." He must comply with the Court's orders in a timely fashion or ask
8 for an extension of time to do so. Failure to comply may result in the dismissal of this action
9 pursuant to Federal Rule of Civil Procedure 41(b).

10 Plaintiff's motion to proceed *in forma pauperis* is GRANTED. The Clerk is directed
11 to reopen the action.

12 **IT IS SO ORDERED.**

13 DATED: January 7, 2011


RICHARD SEEBORG
United States District Judge

United States District Court
For the Northern District of California